

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-731

March 25, 2004

Appeal of Consumer Assistance Division  
Decision #2003-14789 Regarding Northern  
Utilities/Investigation Into Accuracy of Meter  
Test

ORDER

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WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

In this Order, we find that we cannot rely on the accuracy of the meter test conducted by Bay State Gas on behalf of its affiliate Northern Utilities (NU or Northern) on March 12, 2004. Therefore, we direct Northern and its customer RMH to provide the Commission with certain information so the parties and Commission Staff can determine a reasonable estimate of gas usage by RMH during the time period September 21, 2001 through March 10, 2003. We also encourage RMH and Northern to reach their own resolution in lieu of filing the information with the Commission.

**II. PROCEDURAL BACKGROUND<sup>1</sup>**

On March 7, 2003, RMH contacted the Commission's Consumer Assistance Division (CAD) about a billing dispute it had been unable to resolve with NU. RMH complained about the high amount of usage appearing on its bills. After completing an investigation, CAD issued its decision on September 25, 2003 finding that RMH was responsible for all usage recorded on properly operating meters installed on September 21, 2001 and on March 10, 2003. On October 2, 2003, RMH appealed CAD's decision to the Commission. RMH asked that it be given an opportunity to present evidence and written argument in support of overturning CAD's decision.

After reviewing the record and filings from NU and RMH, the Commission decided to hear RMH's appeal, pursuant to Chapter 86, §6 of the Commission's Rules, on one issue: the accuracy of the meter test. As stated in CAD's decision, the Commission's policy is that unless a meter is defective, a customer is responsible for the cost of any utility service once it passes through, and is recorded on, the meter. RMH raised a number of questions about the accuracy and the manner in which NU conducted the meter test that needed to be resolved before the Commission could rely on the results of the test and the usage recorded on the meter. Therefore, it directed the Hearing Examiner to establish a process so the parties could be heard on this issue.

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<sup>1</sup> A more detailed description of the procedural background of this case appears in our Order Opening Investigation issued on November 20, 2003.

Northern and RMH witnesses prefiled testimony in December 2003 and January 2004 and both parties conducted discovery. A hearing took place on February 12, 2004. Both parties filed Closing Briefs on March 8, 2004.

### III. SUMMARY OF ARGUMENTS

#### A. RMH

RMH argues that the evidence introduced at the February 12, 2003 hearing severely undercuts the reliability and integrity of the test results; therefore, they cannot be relied upon by the Commission. RMH alleges six deficiencies. First, it claims that Northern's technician did not properly remove oil found in the measuring chamber of the meter. Second, the difference of greater than 4/10 percent between the open and check tests "casts doubt" on the accuracy of tests. Third, it is questionable whether the flow rates were within recommended guidelines. Fourth, the test printout was inconsistent with a pass result. Fifth, Northern failed to retest the meter on a separate prover following the faulty printout. Sixth, the test was improperly supervised. RMH also asks the Commission not to rely on the test Northern performed in November 2003 because of the length of time that had passed since the original meter tests and the lack of evidence as to the treatment of the meter during that period of time. RMH also questions Northern's conduct in not turning over the test results until the hearing.

RMH asks to pay no more than the \$50,735.88 it has already paid for service during the time period September 2001 through June 2003.<sup>2</sup> It also asks the Commission to order Northern to reimburse RMH for its reasonable attorney's fee and costs incurred in bringing this matter to the Commission.

#### B. Northern Utilities

Northern argues that the meter test it performed on March 12, 2003 demonstrated that the meter was operating with 99.11% of accuracy. It also argues that the meter tested accurately prior to when it was installed in September 2001.

According to Northern, the first test performed by the meter technician indicated that the meter was accurate but following Bay State's guidelines, it retested the meter because the open and check rates were not within 1% of each other. After readjusting the eye, a second test also indicated that meter to be accurate (99.1%). The technician then ran a third test which showed the meter to be 99.7% accurate.

Northern argues that oil in the chamber would not affect the test results. Northern's technician explained that he wiped out any excess oil. It claims that the error

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<sup>2</sup> Presumably RMH would also pay the balance due of \$13,487.91 from the period September 2000 – August 2001. Northern charged RMH \$20,000 for this period and RMH made only one payment in that time period of \$6,512.09.

on the pulse rate exhibited on the meter testing data sheet is a printing translation error and does not indicate that the meter was operating improperly. In conclusion, Northern claims that it followed its tariffs and procedures in testing the meter and that the meter tested as accurate in all four of the tests (including one performed in November 2003). Therefore, it argues that the Commission should reject RMH's appeal.

#### **IV. PERTINENT FACTUAL BACKGROUND**

Through the record developed at CAD and the evidence at the hearing the following facts appear not to be in dispute. RMH purchased a building (formerly called the Riverdam Millyard) at 24 Pearl Street in Biddeford, Maine on December 8, 2000. From December 2000 to September 2001, RMH questioned the accuracy of the bills it received from Northern for gas it used to heat the building. In August of 2001, Northern determined that the meter was not properly operating. It installed a new meter on September 21, 2001. In January 2003, Northern adjusted the amount owed from December 2000 through September 21, 2001 from \$128,633 to \$77,412. It then further reduced the bill by an additional \$57,247.97 making the total amount owed for December 2000 to September 2001 \$20,412. This adjustment is not being disputed by either party.

Northern provided records indicating that the meter installed in September 2001 tested accurately before it was installed in September. RMH continued to receive bills it considered to be unrepresentative of its usage during the entire period from October 2001 through early 2003. It complained to CAD on March 7, 2003 that it had been unable to resolve its dispute with Northern. At that time Northern claimed RMH owed over \$200,000.

#### **V. DECISION**

The Commission's policy is that a customer is responsible for the cost of any utility service once it passes through, and is recorded on, a properly operating meter. At dispute in this case is whether the meter was properly operating. When the dispute arose in March 2003, Northern Utilities offered to remove the meter and test it in the presence of an RMH representative. That test took place at Bay States' facilities in Springfield, Massachusetts on March 12, 2003. The Commission has no specific rules about gas meter accuracy or meter testing (in contrast to electric meters which are covered by the provisions in Chapter 32 (III)). However, Northern's tariffs require a meter to measure within 2% of accuracy Northern Tariffs Page 9 §12 (First Revised).

Bay State's technician performed three tests on March 12, 2003. We accept Northern's explanation that the first test's difference between the open test and check test<sup>3</sup> of greater than 4/10 of 1% was not an indication that the meter test failed. Instead, a difference of greater than 4/10 alerts the technician to make sure the eye is correctly

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<sup>3</sup> The open test tests the meter at 80% of its maximum capacity and the check test tests the meter at 20% of capacity.

aligned. Northern's technician rechecked the eye and proceeded to test the meter again. We find nothing improper in the procedure used by the technician to test the meter or the manner in which he was supervised.

The erroneous printout raises the greatest concern about the accuracy of the meter test and the meter itself. The printout is the official documentary record of the test result. As emerged at the hearing, the printout contained information that was inconsistent with the passing grade which appeared at the bottom of the printout. Although Mr. Page testified that the problem was with the printing translation software, he provided no reason why the problem could not have been in the software that actually analyzes the results in the computer. His testimony was conclusory and based on what others had told him, not on his own experience with such software.

In addition, we question the way in which Northern handled the discovery of erroneous printed results. Mr. Tuttle, the technician's supervisor, who was not in attendance during the test, noticed the printout discrepancy within a few days of the test. He brought the mistake to the attention of the manufacturer and met with its representative in April. Yet Northern made no effort to inform RMH of the problem nor did it consider ordering a retest at that time. It appears a retest was not even considered until after we issued our order in November initiating an investigation into the meter test following RMH's appeal of CAD's decision. The passage of time and the unknown treatment of the meter between March and November makes it impossible to rely on the November results. Taken together, the printing error and Northern's handling of the error creates sufficient doubt to reject the results of the March tests.

Although we reject the test results, we disagree with RMH's claim that it should owe Northern nothing for usage occurring from September 2001 through March 2003.<sup>4</sup> It is clear that RMH used gas to heat a very large commercial building it owns for the heating seasons of 2001-2002 and 2002-2003. We find nothing so egregious in the actions of Northern that should relieve RMH from paying for gas it used. The only issue is how to reasonably determine the amount it used. Toward that end, we direct RMH and Northern to take the following steps to determine the amount of usage during this period. RMH should produce the oil usage for the year before the boiler was changed from an oil to gas in Summer 1999 (by the previous owners Gamache Enterprises). Northern should provide billing information at the location for September 1999 through November 2000, the first year that gas was used by the previous owner. The parties, with assistance from our Staff if needed, should convert the oil usage to gas equivalent. Northern should also provide billing information for comparable buildings in its service territory for the winters of 2001-2002 and 2002-2003 to allow for a comparison of usage between the two winter periods to adjust for any impact from a colder winter.

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<sup>4</sup> We also reject RMH's request that Northern reimburse it for its attorney's fees and costs. RMH cites no specific authority for such an award nor has the Commission ever found that the implied powers provision in 35-A M.R.S.A. 104 justifies such an award.

We also invite the parties to agree on their own method for estimating gas usage for 2001-2002 and 2002-2003. NU should report back to the Commission with the required data or the terms of a settlement by May 1, 2004.

Dated at Augusta, Maine, this 25<sup>th</sup> day of March, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.